

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEON A. BALTHASER,

Defendants.

Civil Action No.

Judge

COMPLAINT

The United States of America, by authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

1. This is a civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. § 9607(a), seeking to recover costs incurred by the United States in response to a release and threatened release of hazardous substances from the Peach Alley Parking Lot Superfund Site located in Hamburg, Berks County, Pennsylvania ("Peach Alley Site" or "the Site"). The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, on the defendant's liability for further response costs that will

be binding in any subsequent action or actions to recover further response costs incurred at or in connection with the Site.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331(a), 1345 and 1355.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391(b) and (c), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in the Eastern District of Pennsylvania and because the Site is located in the Commonwealth of Pennsylvania.

### **SITE DESCRIPTION AND HISTORY**

4. The Site consists of approximately one acre of Peach Alley near Walnut Street in Hamburg Borough in Berks County, Pennsylvania. The Peach Alley Site is directly across Walnut Street from the former Price Battery manufacturing plant in Hamburg, Pennsylvania. Lead-contaminated battery casings were disposed at the Peach Alley Site.

5. The Peach Alley Site is contaminated with lead in surface soil from the disposal of lead-contaminated battery casings. Elevated levels of lead, as high as 500,000 ppm, were found in the surface soil at the Peach Alley Site. EPA's removal action level for lead in surface soils (i.e. the level above which EPA believes action is necessary to protect human health) at the time of the Peach Alley removal was 400 ppm in residential areas.

6. In response to the actual and threatened releases of hazardous substances at the Peach Alley Site, EPA has incurred, and will continue to incur, response costs that are not inconsistent with the National Contingency Plan, promulgated under CERCLA Section 105, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300. EPA has conducted and/or overseen various response actions at the Peach Alley Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, including, but not limited to, securing the Site, conducting a site assessment, testing soil, and investigation and enforcement. In November 2002, EPA conducted a Site inspection which included sampling of the materials at the Peach Alley Site. The Site is currently owned by defendant Leon A. Balthaser.

7. In approximately 1997, Leon A. Balthaser and Dorothy Balthaser acquired title to what is now the Site. At least a portion of the Peach Alley Site was owned by General Battery until approximately August 8, 1997.

8. In approximately 2001, Leon A. Bathaser obtained title in his own name to what is now the Peach Alley Site.

9. Between approximately the 1950's until 1966, Price Battery manufactured lead-acid batteries at a plant at Third and Walnut Streets in Hamburg, Pennsylvania. As part of this operation, Price Battery broke open lead-acid batteries and reused the lead from the batteries in its smelter operation. Price disposed of the lead-contaminated battery casings.

10. As a result of use of lead-contaminated battery casings as fill, the Peach Alley Site became contaminated with lead. Lead is listed as a hazardous substances at 40 C.F.R. § 302.4.

### **DEFENDANT**

11. Defendant Leon A. Balthaser is a resident of the Commonwealth of Pennsylvania and resides in this district.

12. Leon A. Balthaser has owned the property that is the Peach Alley Parking Lot Superfund Site since approximately 2001.

13. Leon A. Balthaser is an owner of the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

### **RESPONSE ACTIONS TAKEN AT THE SITE**

14. In response to an incident report to the National Response Center on July 19, 2002, EPA performed a site inspection, including sampling for hazardous substances at the Site in November 2002.

15. Analysis of the samples revealed lead levels in the parking lot surface soil as high as 522,000 ppm.

16. EPA conducted a removal action at the Peach Alley Site, which consisted , among other things, of excavating and disposing of lead-contaminated soil,

17. As of January 25, 2005, EPA had incurred response costs of approximately \$401,950.60 for response actions at the Site.

18. The United States expects to incur additional amounts for response actions at the Site, including, but not limited to, further cleanup activities and enforcement relating to the Site.

## **FIRST CLAIM FOR RELIEF**

### **Response Costs**

19. Paragraphs 1 through 18 are realleged and incorporated herein by reference.
20. The defendant is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
21. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
22. Lead, the substance identified in Paragraphs 5, 10 and 15 of this Complaint, is a "hazardous substance" as that term is defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and at 40 C.F.R. Part 302.4.
23. There has been a "release" or "threatened release," of hazardous substances from the Site into the environment as defined by Sections 104(a), 107(a), 101(8), and 101(22) of CERCLA, 42 U.S.C. § 9604(a), 96-07(a), 9701(8), and 9601(22), in that, *inter alia*, hazardous substances were poured onto the ground or were buried, dumped, disposed of, or leached into the soil, surface and/or groundwater at the Site.
24. EPA has performed and is continuing to perform necessary or appropriate response actions in connection with the Facility as authorized by Section 104 of CERCLA, 42 U.S.C. § 9604.
25. As a result of the release or threatened release of hazardous substances from the Site, the United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and defined by Section 101(23) and 101(25) of CERCLA, 42 U.S.C.

§ 9601(23) and (25). These include, but are not limited to, response costs incurred and to be incurred for planning, legal, or other activities necessary or appropriate to plan and implement response actions, and for enforcement purposes.

26. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

27. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

28. The United States will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by the defendant.

29. Leon A. Balthaser is an "owner" and/or "operator" of the Site, as defined by Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and is jointly and severally liable to the United States for the costs of the response actions the United States has taken or will take at the Site.

30. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendant Leon A. Balthaser is liable to the United States for the payment of response costs incurred by the United States as a result of the response actions taken at the Site.

**SECOND CLAIM FOR RELIEF**  
**Declaratory Judgment**

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United

States requests the Court to enter a declaratory judgment on liability for response costs or damages that will be binding in any subsequent action or actions to recover further response costs or damages.

**REQUEST FOR RELIEF**

WHEREFORE, the United States of America requests that this Court enter a judgment against Defendant as follows:

- A. Order the Defendant to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;
- B. Enter a declaratory judgment on liability stating that Defendant will be liable for all future response costs incurred by the United States in connection with the Site;
- C. Award Plaintiff its costs and disbursements in this action; and
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environment and Natural Resources Division  
U.S. Department of Justice

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DONNA D. DUER  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-3475  
[donna.duer@usdoj.gov](mailto:donna.duer@usdoj.gov)

MICHAEL L. LEVY  
United States Attorney  
Eastern District of Pennsylvania

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MARGARET HUTCHINSON  
Assistant United States Attorney  
Suite 1250  
615 Chestnut Street  
Philadelphia, PA 19106  
(215) 861-8324

OF COUNSEL:

Aleacia Chinkhota  
Assistant Regional Counsel  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LEON A. BALTHASER,

Defendants.

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) Judge  
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) NOTICE OF LODGING  
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**PLAINTIFF UNITED STATES OF AMERICA'S**  
**NOTICE OF LODGING OF CONSENT DECREE**

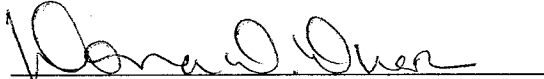
The United States is lodging with the Court a proposed Consent Decree resolving the liability of defendant Leon A. Balthaser under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), for the Peach Alley Parking Lot Superfund Site in Hamburg, Berks County, Pennsylvania. The terms of the settlement is set forth in the proposed Consent Decree.

The United States requests that the Court not sign the proposed Consent Decree at this time. Pursuant to Department of Justice regulations codified at 28 C.F.R. § 50.7, the United States is required to publish in the Federal Register a notice that the proposed Consent Decree has been lodged with the Court. The notice will solicit public comment for a period of thirty (30) days. During the comment period, no action is required by the Court. After the close of the comment period, the United States will evaluate any comments received and will request the Court to take appropriate action regarding the Consent Decree.

Respectfully submitted,

W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611

By:



DONNA D. DUER  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 514-3475  
[Donna.Duer@usdoj.gov](mailto:Donna.Duer@usdoj.gov)

MICHAEL L. LEVY  
United States Attorney  
Eastern District of Pennsylvania

By:

MARGARET HUTCHINSON  
Assistant United States Attorney  
Suite 1250  
615 Chestnut Street  
Philadelphia, PA 19106  
(215) 861-8324

OF COUNSEL:

Aleacia Chinkhota  
Assistant Regional Counsel  
EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	Judge
LEON A. BALTHASER	)	
	)	
Defendant.	)	
_____	)	

**CONSENT DECREE**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LEON A. BALTHASER

Defendant.  
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) Judge  
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**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607(a), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Peach Alley Parking Lot Superfund Site in Hamburg, Berks County, Pennsylvania ("Peach Alley Site" or "the Site");

B. The United States has incurred over \$400,000.00 in Response Costs in connection with the Site;

C. The Complaint filed by the United States alleges that Leon A. Balthaser is liable to the United States for reimbursement of Response Costs pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a person who owns the Site;

D. Leon A. Balthaser, the defendant who has entered into this Consent Decree ("Settling Defendant"), does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint;

E. The United States has reviewed the Financial Information submitted by Settling Defendant to determine the extent to which he is financially able to pay Response Costs incurred in connection with the Site. Based upon this Financial Information, the United States has determined that the only asset Settling Defendant has available without creating an undue financial hardship is the value of his equity in the Site property;

F. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendant. The Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and his heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendant under this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean the information identified in the Declaration attached hereto in Appendix A.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

j. "Parties" shall mean the United States and the Settling Defendant, Leon A. Balthaser.

k. "Plaintiff" shall mean the United States of America.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Response Costs" shall mean costs incurred and to be incurred pursuant to CERCLA by the United States in connection with the Peach Alley Site.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.



o. "Settling Defendant" shall mean Leon A. Balthaser.

p. "Site" shall mean the Peach Alley Site, encompassing approximately 41,000 square feet, in Hamburg, Berks County, Pennsylvania, tax parcel identification no. 4494-05-08-6812.

q. "Transfer" shall mean any conveyance or transfer of any interest in the Site Property, or portion thereof, including, but not limited to, fee interest, leasehold interests, easements, assignments, licenses and mortgage interests.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for the Settling Defendant to make a cash payment in reimbursement of Response Costs and to resolve his alleged liability for Response Costs in connection with the Site, as provided in the Covenant Not to Sue by the United States in Section IX, and subject to the Reservations of Rights by United States in Section X.

#### **VI. PAYMENT OF RESPONSE COSTS**

5. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall pay to the EPA \$20,000 in reimbursement of Response Costs.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2006V00449 the EPA Region and Site Spill ID Number A3V1, and DOJ Case Number 90-11-3-08820. Payment shall be made in accordance with instructions provided

to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 10103-2029

Barbara Borden (3PM30)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 10103-2029

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.

9. In the event that payments required by Paragraph 5 are not made within thirty (30) days of the date of entry of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the date of entry of this Consent Decree and accruing through the date of the payment.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

10. Interest on Late Payments. If Settling Defendant fails to make any payment required by this Consent Decree by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

11. Stipulated Penalty.

a. If any amounts due under this Consent Decree are not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 10, above, \$1,000.00 per violation per day that such payment is late.

b. If Settling Defendant fails to comply with the deadlines and obligations imposed on Settling Defendant by Section VII and XIII of this Consent Decree, Settling Defendant shall pay to EPA, as a stipulated penalty, \$500.00 per violation per day for each day that performance is late or such deadline or obligation is not met.

c. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number A3V1, and DOJ Case Number 90-11-3-08820, and shall be sent to:

United States Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

d. At the time he makes his payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 10193

Barbara Borden (3PM30)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 10193

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

12. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

13. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Sections VI and VII or from performance of any other requirements of this Consent Decree.

#### **VIII. RELEASE OF NOTICE OF FEDERAL LIEN**

15. Within sixty (60) Days after EPA receives the payment required by Paragraph 5 of this Consent Decree, and subject to the Reservation of Rights in Section X of this Consent Decree, EPA agrees to remove any lien it may have on the Site Property under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), as a result of response action conducted by EPA at the Site.

#### **IX. COVENANT NOT TO SUE BY THE UNITED STATES**

16. Covenant Not to Sue by the United States. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the

satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Leon A. Balthaser. If the Financial Information provided by Leon A. Balthaser is subsequently determined to be false or, in any material respect, inaccurate or incomplete, Leon A. Balthaser shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 22 of this Consent Decree shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Leon A. Balthaser's false or materially inaccurate or incomplete information.

#### **X. RESERVATION OF RIGHTS BY UNITED STATES**

17. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 16. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendant's status as owner or operator for

hazardous substances disposed at the Site after signature by Settling Defendant of this Consent Decree or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

#### **XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

18. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Except as provided in Paragraphs 18 and Paragraph 24 of this Consent Decree, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 17 (c)-(e), but only to the

extent that Settling Defendant's claims arise from the same response action or Response Costs that the United States is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

## **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

21. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those Response Costs or response actions as to which the United States has reserved its rights under this Consent Decree (except



for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

23. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by him for matters related to this Consent Decree, he will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against him for matters related to this Consent Decree, he will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon him. In addition, Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

### **XIII. ACCESS AND INSTITUTIONAL CONTROLS**

25. Settling Defendant shall:

- a. commencing on the date of lodging of this Consent Decree, and thereafter,

provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
  2. Verifying any data or information submitted to the United States;
  3. Conducting investigations relating to contamination at or near the Site;
  4. Obtaining samples;
  5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
  6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or his agents;
  7. Assessing Settling Defendant's compliance with this Consent Decree;
- and
8. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree and continuing thereafter, comply with the following:

1. Refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the response action performed at the Site;

2. Maintain the asphalt cap to prevent any exposure to soils/gravel

beneath the cap;

3. Repair any cracks or potholes on the asphalt cap promptly;

4. Refrain from, forbid and prevent excavation of any type, by the Settling Defendant or third parties, on the Site Property, unless EPA, Region III, Chief of the Eastern Response Branch or EPA, Region III, Regional Response Center is notified and provides written approval of all plans at least 30 days in advance of commencing such excavation; and

5. If excavation is proposed or commenced by other parties, notify EPA immediately of such activity.

c. Within thirty (30) days of entry of this Consent Decree, file the Notice of Access, Property Use Restrictions and Obligations of Successor(s)-in-Interest of Site Property attached hereto as Appendix B and referred to hereinafter as "Title Notice," with the Recorder of Deeds, Berks County, Commonwealth of Pennsylvania, which shall provide notice to all successors-in-interest that such property is part of the Peach Alley Superfund Site. Such Title Notice shall identify the civil action number of this Consent Decree and the date this Consent Decree is lodged. Such Title Notice shall recite the Settling Defendant's obligations to comply with the use restriction and access requirements of Paragraph 25 under this Section XIII (Access and Institutional Controls). The recording shall be done in such manner as shall be effective to bring the Title Notice to the attention of any person examining or researching the state and/or quality of the title to the real property constituting Settling Defendant's Site Property or searching for any encumbrances, covenants, easements, liens, restrictions, or other limitations relating to such property. Such recording shall be made in the Grantor/Grantee and Lot/Block

indices of the deed for Settling Defendant's Site Property. Thereafter, each deed, title, or other instrument of Transfer for property executed by the Settling Defendant regarding the Site Property, or any portion thereof, shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Title Notice. The Settling Defendant shall not modify or terminate such Title Notice without prior written approval of EPA. The Settling Defendant shall provide EPA with a certified copy of the recorded Title Notice within ten (10) days of recording such Title Notice.

d. At least thirty (30) days prior to any Transfer, give the successor(s)-in-Interest written notice of this Consent Decree ("Notice of Consent Decree"), including a written description of the use restriction and access requirements set forth in paragraph 25 of this Section XIII (Access and Institutional Controls) of this Consent Decree. At least thirty (30) days prior to such Transfer, Settling Defendant shall also give written notice to EPA of the proposed Transfer, which shall include the name(s), address(es) and telephone number(s) of the successor(s)-in-interest, and the date on which notice of the Notice of Consent Decree was given to the successor(s)-in-interest.

e. In the event of any Transfer, expressly reserve in the instrument effecting the Transfer an irrevocable and permanent restrictive covenant that imposes upon the successor(s)-in-interest the restrictions set forth in this Section XIII (Access and Institutional Controls) of this Consent Decree.

f. In the event of any Transfer, provide EPA with copies of all agreement(s) or contract(s), including but not limited to, indemnification agreement(s) or

contract(s), executed in connection with such conveyance, transfer or assignment, within thirty (30) days of the effective date of such agreement(s).

37. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

38. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. RETENTION OF RECORDS**

39. Settling Defendant hereby certifies individually that, to the best of his knowledge and belief, after thorough inquiry, he has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site since notification of potential liability by the United States regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### **XV. CERTIFICATION**

40. Settling Defendant hereby certifies that, to the best of his knowledge and belief, after reasonable inquiry:

a. he has not altered, mutilated, discarded or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site since notification of potential liability by the United States and that he has fully complied with any and all requests by EPA for documents or information regarding the Site and his financial circumstances pursuant to Section 204(e) of CERCLA, 42 U.S.C. § 9604(e).

b. the Financial Information submitted to EPA, which Financial Information is identified in Appendix A, fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant signs this Consent Decree; and

c. he has fully disclosed the existence of any insurance policies that may cover claims relating to clean up of the Site.

#### **XVI. NOTICES AND SUBMISSIONS**

41. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively:

As to the Department of Justice:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-2-1275)  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

As to the U.S. Environmental Protection Agency:

Joseph J.C. Donovan  
Chief, Site Remediation Branch #2 (3RC42)  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Laura Janson  
Chief, Cost Recovery Branch (3HS62)  
Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

As to Settling Defendant:

Leon A. Balthaser  
296 South Crescent Avenue  
Hamburg, PA 19526

**XVII. RETENTION OF JURISDICTION**

42. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

### **XVIII. INTEGRATION/APPENDICES/MODIFICATION**

43. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A - Declaration concerning the Financial Information provided to EPA by Settling Defendant

Appendix B - Notice of Access, Property Use Restrictions and Obligations of Successor(s)-in Interest of Site Property

Any agreed upon written modification to this Consent Decree must be signed by the Parties. No Party may petition the Court for modification without having first made a good faith effort to reach agreement with the other Party on the terms of such modification.

### **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

44. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.



45. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XX. SIGNATORIES/SERVICE**

46. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

47. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

48. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

## **XXI. FINAL JUDGMENT**

49. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling

Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007.

---

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Leon A. Balthaser relating to the Peach Alley Parking Lot Superfund Site.

FOR THE UNITED STATES OF AMERICA

1/9/07  
Date

W. BENJAMIN FISHEROW  
Deputy Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

1/9/07  
Date

DONNA D. DUER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Leon A. Balthaser relating to the Peach Alley Parking Lot Superfund Site.

ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY:

1/9/07  
Date

*for* \_\_\_\_\_  
DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

1/3/07  
Date

\_\_\_\_\_  
WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

12/28/06  
Date

\_\_\_\_\_  
ALEACIA L. CHINKHOTA  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Leon A. Balthaser relating to the Peach Alley Parking Lot Superfund Site.

ON BEHALF OF LEON A. BALTHASER

12-15-06

Date

LEON A. BALTHASER  
296 South Crescent Avenue  
Hamburg, PA 19526

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEON A. BALTHASER

Defendant.

Civil Action No.

Judge

Declaration

I, Leon A. Balthaser, hereby certify that the following documents contain accurate and complete information concerning my financial condition for the period January 1, 2001 through June 27, 2006:

- ## APPENDIX A

4. A Satisfaction Piece dated September 9, 1998, indicating the original mortgage dated August 11, 1997 for \$20,000 between Leon A. Blathaser and Dorothy A. Balthaser as Mortgagors and Pennsylvania National Bank as Mortgagee has been satisfied. This mortgage satisfaction pertains to the Peach Alley Site property.

5. A copy of the Real Estate tax bill for 2006 on the property located at 296 S. Crescent Ave. Hamburg, Pa.

6. A copy of a profile for Leon A. Balthaser from Leesport Bank listing all of the accounts and their current balances as of June 28, 2006.

7. A letter from the Social Security Administration dated July 3, 2006, advising Leon A. Balthaser that he will be eligible for medicare starting August, 2006 and that the premium will be deducted from the social security check.

8. A confirmation of a bond purchase in the principal amount of \$10,000 purchased on August 15, 2002 sent to Leon A. Balthaser.

I further certify that my financial condition has not changed materially since June 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 12-15-08.

Leon A. Balthaser  
296 South Crescent Avenue  
Hamburg, PA 19526

## APPENDIX B

Tax Parcel Number: 4494-05-08-6812

Prepared by: U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

### **NOTICE OF ACCESS, PROPERTY USE RESTRICTIONS AND OBLIGATIONS OF SUCCESSOR(S)-IN-INTEREST OF SITE PROPERTY**

This Notice of Access, Property Use Restrictions and Obligations of Successor(s)-in-Interest of Site Property ("Title Notice") is made this \_\_\_\_\_ day of \_\_\_\_\_ 200\_, by Leon A. Balthaser, having an address of 296 S. Crescent Avenue, Hamburg, Pennsylvania 19526.

WHEREAS, Leon A. Balthaser (referred to hereinafter as "Owner") is the owner of the Peach Alley Parking Lot Superfund Site ("Site" or "Site Property"), an approximately 41,000 square foot parking lot located between 2<sup>nd</sup> and 3<sup>rd</sup> Streets off of Walnut Street in Hamburg, Berks County, Pennsylvania. A legal description of the Site Property is attached hereto as Exhibit A. At the time of EPA's initial Site Assessment, the Site was used as a parking lot for patrons of a nearby restaurant. The Site was formerly part of the General Battery Corporation plant and was used until 1995 for employee parking and for storage of various materials, including crushed battery casings. The Owner purchased the Site property from General Battery Corporation in 1997;

WHEREAS, lead is listed in 40 C.F.R. Part 302, Table 302.4, and is therefore a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Lead was disposed of at the Site until approximately 1995;

WHEREAS, the Owner approached EPA and expressed concern about the presence of crushed battery casings on the Site property. Based on a visual inspection, an EPA On-Scene Coordinator ("OSC"), submitted an incident report to EPA's National Response Center on July 19, 2002, in which he reported the presence of broken batteries/battery waste on the surface of the Site;

WHEREAS, on November 26, 2002, the Owner signed an access agreement giving his consent for EPA to enter the Site property to perform sampling of on-site material. EPA's analysis of the samples revealed lead levels in the Site surface soil as high as 522,000 parts per million ("ppm"). All of the samples collected exceeded the Removal Action level of 400 ppm for lead that had previously been established by EPA for Superfund sites in and near the Borough of Hamburg;



WHEREAS, on November 27, 2002, the OSC discussed the sampling results from the Site Assessment with representatives from the Agency for Toxic Substances and Disease Registry ("ATSDR"). ATSDR indicated that these levels of lead on the surface of the parking lot presented an imminent and substantial endangerment to the public health, and recommended that the parking lot be closed and the lead removed and/or capped before the lot was used again. Based on these discussions with ATSDR and the sampling results the OSC determined that a Removal Action was warranted;

WHEREAS, on December 3, 2002, the OSC determined that the Site met the criteria for emergency removal and initiated a Removal Action and obligated \$250,000.00 in CERCLA funding in an Action Memo to initiate an emergency Removal Action to secure the Site and properly address the lead at the Site. The Action Memo outlined the work to be performed at the Site, which included fencing, site security, excavation of test pits and sampling of materials, excavation of material for off-site disposal, capping with clean fill and/or asphalt to prevent exposure to lead contamination, and site restoration;

WHEREAS, from December, 2002, through early February, 2003, EPA's contractor performed scraping, excavation, and off-site disposal of material from the Site. In January and early February, 2003, EPA's contractor loaded trucks with 508 tons of hazardous soil and 1 truck load of debris for off-site disposal. EPA's Superfund Technical Assessment and Response Team Contractor ("START") collected a total of forty (40) samples in the areas where soil had been removed. All samples collected were above the 400 ppm action level, confirming that even after the surface soil/gravel was removed high lead concentrations still remained. After receiving this information, the OSC determined that an asphalt cap was necessary to prevent contact with the remaining contaminated soil;

WHEREAS, during April 2003, EPA's contractor graded, compacted, and paved the Site;

WHEREAS, to protect public health and welfare and the environment from the contaminated soils remaining below the asphalt cap, the OSC has determined that property use restrictions needed to be implemented;

WHEREAS, on \_\_\_\_\_, 2007, the United States District Court for the Eastern District of Pennsylvania entered a consent decree ("Consent Decree"), Civil Action No. \_\_\_\_\_, resolving the civil action under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), against the Owner. The Consent Decree was signed by the United States, EPA, and the Owner. The Consent Decree includes this Title Notice as Appendix B to the Consent Decree, and requires that the Owner record this Title Notice as provided herein;

WHEREAS, the Consent Decree requires the Owner to make a cash payment in reimbursement of Response Costs to resolve his alleged liability in connection with the Site, as provided in the Covenant Not to Sue by the United States in Section IX of the Consent Decree, and subject to the Reservations of Rights by United States in Section X of the Decree. The Consent Decree also requires the Owner to (a) to provide access to the Owner's Site Property as set forth in Paragraph 3 below; (b) to comply with use restrictions concerning the Site; and © to provide certain notifications to EPA and potential successor(s)-in-interest should the Owner convey an interest in all or a portion of the Site Property.

#### **DECLARATION REGARDING PROPERTY USE RESTRICTIONS**

NOW, THEREFORE, intending to fulfill the terms of the Consent Decree, the Owner files this Title Notice so that the Property is subject to the advisory set forth below.

1. Purpose: It is the purpose of this instrument to recite the Consent Decree's requirement that the Owner (i) comply with use restrictions concerning the Site set forth in Paragraph 2 immediately below; (ii) provide access to the Owner's Site Property for the purpose of conducting any response activity related to the Site set forth in Paragraph 3 below; and (iii) to provide certain notifications to EPA and potential successor(s)-in-interest should the Owner convey an interest in all or a portion of the Owner's Site Property set forth in Paragraph 4 below.

2. Restrictions on use: The following advisory applies to the use of the Site:

A. Commencing on the effective date of the Consent Decree, and thereafter, the Consent Decree requires the Owner to comply with the following:

(i) refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the Removal Action performed at the Site;

(ii) maintain the asphalt cap to prevent any exposure to soils/gravel beneath the cap;

(iii) repair any cracks or potholes on the asphalt cap promptly;

(iv) refrain from, forbid and prevent excavation of any type, by the Owner or third parties, on the Site property, unless EPA, Region III's Chief of the Eastern Response Branch or EPA, Region III's Regional Response Center is notified and provides written approval of all plans at least 30 days in advance of commencing such excavation; and

(v) if excavation is proposed or commenced by other parties, notify EPA immediately of such activity;

3. Provision of Access: The following advisory applies to the provision of access to the Owner's Site property:

A. Commencing on the date of lodging of the Consent Decree, and thereafter, the Consent Decree requires the Owner to provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- (i) Monitoring, investigation, removal, remedial or other activities at the Site;
- (ii) Verifying any data or information submitted to the United States;
- (iii) Conducting investigations relating to contamination at or near the Site;
- (iv) Obtaining samples;
- (v) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (vi) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Owner or his agents;
- (vii) Assessing the Owner's compliance with the Consent Decree; and
- (viii) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree;

4. Notifications to EPA and potential successor(s)-in-interest: The following advisory applies to the provision of certain notifications to EPA and potential successor(s)-in-interest required by the Consent Decree regarding the Transfer by the Owner of an interest in all or a portion of his Site Property:

A. Within thirty (30) days of entry of the Consent Decree, the Owner shall file this Title Notice with the Recorder of Deeds, Berks County, Commonwealth of Pennsylvania, which shall provide notice to all potential successor(s)-in-interest that such property is part of the Peach Alley Superfund Site. The recording shall be done in such manner as shall be effective to bring this Title Notice to the attention of any person examining or researching the state and/or quality of the title to the real property constituting the Owner's Site Property or searching for any encumbrances, covenants, easements, liens, restrictions, or other limitations relating to such property. Such recording shall be made in the Grantor/Grantee and Lot/Block indices of the Land Records for the Owner's Site Property. Thereafter, each deed,

title, or other instrument of any conveyance or transfer of any interest in the Site Property, or portion thereof, including, but not limited to, fee interests, leasehold interests, easements, assignments, licenses and mortgage interest (hereinafter "Transfer") for property executed by the Owner regarding the Site Property, or any portion thereof, shall contain a notice stating that the property is subject to the Consent Decree and shall reference the recorded location of this Title Notice, the Consent Decree and any restrictions applicable to the property under the Consent Decree.

B. At least thirty (30) days prior to any Transfer, the Owner shall give the successor(s)-in-interest a written notice of the Consent Decree ("Notice of Consent Decree"), including a written description of the use restriction and access requirements set for in Paragraph 25 of Section XIII (Access and Institutional Controls) of the Consent Decree. At least thirty (30) days prior to such Transfer, Owner shall also give written notice to EPA of the proposed Transfer, which shall include the name(s), address(es) and telephone number(s) of the successor(s)-in-interest, and the date on the Notice of Consent Decree was given to the successor(s)-in-interest.

C. In the event of any Transfer, the Owner shall expressly reserve in the instrument effecting the Transfer an irrevocable and permanent restrictive covenant which imposes upon the successor(s)-in-interest the restrictions set forth in Section XIII ("Access and Institutional Controls") of the Consent Decree.

D. In the event of any Transfer, the Owner shall provide EPA with copies of all agreement(s) or contract(s), including but not limited to, indemnification agreement(s) or contract(s), executed in connection with such conveyance, transfer or assignment, within thirty (30) days of the effective date of such agreement(s).

E. In the event that the Owner files for bankruptcy or is placed involuntarily in bankruptcy proceedings, the Owner shall notify EPA within three (3) working days of such filing.

5. No Public Access and Use: This instrument does not grant to the general public any right of access or use to any portion of the Property.

6. Notice and Recording: The Owner is required to include in any instrument effecting a Transfer of the Site Property or any portion of the Site Property, including, but not limited to, deeds, leases and mortgages, a Disclosure which is in substantially the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO PROPERTY USE RESTRICTIONS, DATED \_\_\_\_\_, 200\_\_, RECORDED IN THE RECORDER'S OFFICE IN THE BERKS COUNTY COURTHOUSE, BERKS COUNTY, PENNSYLVANIA, ON \_\_\_\_\_, 200\_\_, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_.

THE SUCCESSOR(S)-IN-INTEREST, FOR HIMSELF AND HIS HEIRS, EXECUTORS AND ADMINISTRATORS, BY ACCEPTANCE OF THIS INSTRUMENT AGREES WITH THE GRANTOR AND HIS HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, THAT SUCH PROPERTY USE RESTRICTIONS SHALL BE COVENANTS RUNNING WITH THE LAND, AND THAT IN ANY INSTRUMENT OF CONVEYANCE OF SAID PREMISES OR ANY PART THEREOF TO ANY PERSON OR PERSONS, SAID PROPERTY USE RESTRICTIONS SHALL BE INCORPORATED BY REFERENCE TO THE NOTICE OF ACCESS, PROPERTY USE RESTRICTIONS AND OBLIGATIONS OF SUCCESSOR(S)-IN-INTEREST OF SITE PROPERTY.

Within thirty (30) days of the date any such instrument of Transfer is executed, Owner shall provide EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

7. Notice to Parties: Any notice, demand, request, consent, approval, or communication that either EPA or Owner desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Leon A. Balthaser  
296 S. Crescent Avenue  
Hamburg, PA 19526

To EPA:

Laura Jansen (3HS62)  
Chief, Cost Recovery Branch  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103  
RE: Peach Alley Parking Lot Superfund Site

and

Joseph J.C. Donovan (3RC42)  
Chief, Site Remediation Branch  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103  
RE: Peach Alley Parking Lot Superfund Site

IN WITNESS WHEREOF, Leon A. Balthaser, the Grantor herein, has executed the  
foregoing Declaration this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
LEON A. BALTHASER

COMMONWEALTH OF PENNSYLVANIA

:SS.

BERKS COUNTY

BE IT REMEMBERED that on this \_\_\_\_ day of \_\_\_\_ A.D.  
2007 personally came before me, the Subscriber, Notary Public for the State and County  
aforesaid, Leon A. Balthaser, Declarant in the foregoing Declaration and Notice of Property Use  
Restrictions, and he acknowledged this Declaration to be his duly authorized act and deed.

GIVEN under my Hand and Seal of office the day and year aforesaid.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission Expires

## EXHIBIT A

### TRACT NO. 1:

ALL THAT CERTAIN piece, parcel or tract of land, together with the frame sheds erected thereon, situate the western side of a sixteen (16) feet wide alley known as Peach Alley and a short distance northwardly from Walnut Street, in the Borough of Hamburg, County of Berks and Commonwealth of Pennsylvania, bounded:

On the north by a sixteen (16) feet wide alley; on the east by the aforesaid sixteen (16) feet wide alley known as Peach Alley; on the south by a twenty (20) feet wide alley and property now or late belonging to Robert F. Stoudt and Mary A. Stoudt, his wife, being No. 239 Walnut Street; and on the west by the right of way of the Pennsylvania Railroad-Schuylkill Valley Division, and property now of late of Hamburg Brookworks, and being more fully bounded and described as follows, to wit:

BEGINNING at a corner marked by an iron pin on the western side of Peach Alley, at its intersection with another sixteen (16) feet wide alley, said corner being the northeastern corner of the herein described property; then along the western side of the aforesaid Peach Alley, South twelve (12) degrees forty eight (48) minutes East, a distance of one hundred thirteen (113) feet nine (9) inches to a corner marked by an iron pin in the northern side of a twenty (20) foot wide alley; then along same and along rear of property belonging now or late to Robert F. Stoudt and Mary A. Stoudt, his wife, being No. 239 Walnut Street, by a line being one hundred twenty (120) feet northwardly from and parallel to the northern curb line of Walnut Street, South seventy eight (78) degrees nine (9) minutes West, a distance of two hundred thirty six (236) feet four and five eighths ( $4 \frac{5}{8}$ ) inches to a corner marked by an iron spike in a building in the eastern right of way line of the right of way of the Pennsylvania Railroad-Schuylkill Valley Division; thence along same by a line being one hundred twenty (120) feet eastwardly from and parallel to the center line, North twenty two (22) degrees eight (8) minutes West, a distance of one hundred sixteen (116) feet three and three eighths ( $3 \frac{3}{8}$ ) inches to a corner; then along property now or late of Hamburg Broom Works, the two (2) following courses and distances, via: (1) North twenty two (22) degrees East, a distance of ninety four (94) feet zero (0) inches to a corner; and (2) north two (2) degrees West, a distance of forty three (43) feet zero (0) inches to a corner in the southern side of a sixteen (16) feet wide alley; then along same, North eighty eight (88) degrees East, a distance of one hundred fifty seven (157) feet seven and five eighths ( $7 \frac{5}{8}$ ) inches to the place of BEGINNING.

CONTAINING one hundred eight and two one hundredths (108.02) perches.

### TRACT NO. 2:

ALL THAT CERTAIN plot of ground situate on the north side of Walnut Street, in the Borough

of Hamburg, County of Berks and Commonwealth of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the north side of Walnut Street, said point being the southwest corner of property now or late of Guy H. Faust and Grace I. Faust, his wife, westwardly along said Walnut Street a distance of forty one feet one eighth inch (41' 0 1/8") to property of the Pennsylvania Railroad Company; thence northwardly along said property of the Pennsylvania Railroad Company a distance of one hundred twenty feet (120') to property now or late of Buechley Lumber Yards, Inc; thence eastwardly along said property now or late of Guy H. Faust and Grace I. Faust, his wife, a distance of one hundred twenty feet (120') to the place of BEGINNING.

BEING PART OF THE SAME PREMISES WHICH THE GREATER BERKS DEVELOPMENT FUND, A PENNSYLVANIA NON-PROFIT CORPORATION, by Deed 11/1/78 and recorded in the Office for the Recorder of Deeds in and for the County of BERKS, and Commonwealth of Pennsylvania in Deed Book Volume 1748, Page 975, granted and conveyed unto GENERAL BATTERY CORPORATION.

BEING THE SAME PREMISES WHICH IRMA SIMPSON, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF ROBERT F. STOUDT, DECEASED, by Deed dated 10/24/73 and recorded in the Office for the Recorder of Deeds in and for the County of BERKS, and Commonwealth of Pennsylvania in Deed Book Volume 1641, Page 117, granted and conveyed unto GENERAL BATTERY CORPORATION.



**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that on \_\_\_\_\_, I  
caused true and correct copies of Plaintiff United States of America's Complaint, Notice of  
Lodging of Consent Decree, and Consent Decree to be served by first class mail on the  
following:

Leon A. Balthaser  
296 South Crescent Avenue  
Hamburg, PA 19526

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